

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Edison Company (U 338-E) for Approval of a Power Purchase Agreement Between the Utility and an Affiliate and for Authority to Recover the Costs of Such Power Purchase Agreement in Rates.

Application 05-12-030
(Filed December 23, 2005)

SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER

Pursuant to Article 2.5 of the Commission's Rules of Practice and Procedure (Rules), this Scoping Memo and Ruling addresses issues, schedule, and other matters necessary to scope this proceeding. The Commission's Rules are available on the Commission's website.¹

I. Background

On December 23, 2005, Southern California Edison Company (Edison) filed Application 05-12-030 for approval of a non-standard power purchase agreement with an Edison affiliate, Kern River Cogeneration Company (KRCC).² On January 9, 2006, the California Cogeneration Council (CCC) filed a statement

¹ See, Commission's Web page (<http://www.cpuc.ca.gov/>), "Laws, Rules, Procedures."

² Edison also filed a motion for a Protective Order to protect as confidential the KRCC contract and the economic analysis and negotiation strategy associated with the KRCC contract. An Assigned Administrative Law Judge's Ruling on January 26, 2006, granted Edison's request to protect the information related to its economic and negotiation strategy, but denied Edison's request to protect the information in the KRCC contract.

of opposition, and The Utility Reform Network (TURN) filed a response. Timely protests to Edison's Application were filed by the Division of Ratepayer Advocates (DRA) and Aglet Consumers Alliance (Aglet), and TURN filed a second response in support.

On March 10, 2006, a prehearing conference (PHC) was held to determine interested parties, create a service list, and identify which factual issues remained as subjects for testimony and evidentiary hearings. At the PHC, DRA, Aglet and the CCC stated that each continues to protest Edison's Application. Therefore, a proposed schedule was developed. In addition, parties agreed to seek mediation through the Commission's Alternative Dispute Resolution process.

II. Categorization and Ex Parte Communication

Edison proposed that this proceeding be categorized as ratesetting, and the Commission preliminarily categorized this proceeding as ratesetting in Resolution ALJ 176-3165, dated January 12, 2006.

The categorization of this proceeding is determined herein to be ratesetting. This is the Assigned Commissioner's Ruling on category, and appeals, if any, must be filed and served within 10 days. (Rule 6.4) In a ratesetting proceeding, *ex parte* communications are permitted only if consistent with certain restrictions, and are subject to reporting requirements. (See, Rules 7(c) and 7.1, and Pub. Util. Code § 1701.3 (c).)

III. Hearings

In its application, Edison proposed that this proceeding not include formal hearings. However, the Commission preliminarily determined that this matter would require hearings in Resolution ALJ 176-3165. At the PHC, it was determined that hearings were necessary. Therefore, this Scoping Memo confirms the preliminary determination in this regard.

IV. Scope of Proceeding

The ultimate issue in this proceeding is to determine whether it is reasonable to approve the proposed power purchase contract between Edison and KRCC. The following specific issues were raised in protest to the Application, and were further discussed at the PHC. These sub-issues include:

- A. **Pricing**: Are the pricing provisions of the KRCC contract reasonable? What basis or evaluation standard should the Commission use to determine whether the proposed pricing is reasonable?
- B. **Power Product**: Are the KRCC contract provisions providing baseload capacity to Edison properly valued and reasonable?
- C. **Contract Term**: Whether the length of the proposed contract is appropriate, given the pricing and policy issues under consideration in Phase 2 of the Avoided Cost Rulemaking R.04-04-025/R.04-04-003 on Qualifying Facility (QF) issues.
- D. **Affiliate Treatment**: Does the KRCC Contract represent favorable treatment for an Edison QF affiliate?
- E. **Broader Applicability**: On what basis will Edison make the KRCC Contract provisions and terms available to other QFs?
- F. **Expedited Request**: Is it necessary for the Commission to rule on the KRCC Contract, as requested by Edison, by June 1, 2006?

V. Schedule

EVENT	DATE
Application filed	December 23, 2005
Prehearing Conference	March 10, 2006
Intervenor Testimony Due	March 29, 2006
Rebuttal Testimony Due	April 3, 2006
Evidentiary Hearings (if required)	April 5-7, 2006
Opening Briefs and requests for Final Oral Argument, assuming a hearing is required.	April 17, 2006
Reply Briefs (proposed submission date)	April 24, 2006
Principal Hearing Officer's Proposed Decision	May 11, 2006
Initial Comments on the Proposed Decision	May 19, 2006
Reply Comments on the Proposed Decision	May 22, 2006
Final Commission Decision	June 2006

Consistent with law, the issues raised in this Scoping Memo shall be resolved within 18 months of the date of this Scoping Memo. (Pub. Util, Code § 1701.5(a).) However, as discussed at the PHC, and as indicated in the proposed schedule, it is currently the intention to accelerate this proceeding and resolve this proceeding by the end of June 2006. Accordingly, parties have committed to an expedited schedule, including preparation of testimony, hearings and briefs. However, parties may move for different dates as appropriate. The adopted dates in the Proposed Schedule may also change as a result of Assigned Commissioner Ruling.

VI. Briefs

Parties should use the same outline for briefs. This practice promotes understandability, consistency, and completeness. Parties shall agree on a common outline for briefs before the conclusion of hearings, and shall bring any unresolved disputes to the attention of the Principal Hearing Officer before the end of hearings.

VII. Final Oral Argument

A party in a ratesetting proceeding has the right to make a Final Oral Argument (FOA) before the Commission, if the FOA is requested within the time and manner specified in the Scoping Memo or later ruling. (Rule 8(d).) Parties shall request FOA no later than the date Opening Briefs are due.

VIII. Service List, Service, and Filing

The official service list was created at the PHC, and is now on the Commission's Web Page.³ Parties are responsible for checking to ensure that the correct information is contained on the service list, and notifying the Commission's Process office and other parties of corrections or ministerial changes. Substantive changes (e.g., to be added as an appearance) must be made by motion or at hearing.

The Commission has adopted electronic service rules. (See Rule 2.3.1.) Parties should familiarize themselves with this ruling as well as the general rules of service. (See Rule 2.3.) Parties shall ensure that they mail one printed copy of each filing to Administrative Law Judge (ALJ) Bruce DeBerry.

³ The service list may be accessed via the following link:

<http://www.cpuc.ca.gov/proceedings/A0512030.htm>

Footnote continued on next page

Documents that are subject to filing must continue to be filed with the Commission's Docket Office in a manner consistent with the Commission's requirements for filing. (For example, see Article 2 of the Rules.) Because service may be performed electronically, however, parties who do not have ready access to Commission offices where filings are accepted may file pleadings one day after the otherwise applicable due date, provided that service is accomplished on the due date. Parties taking advantage of this authorization shall refer to this Ruling so that the Commission's Docket Office is alerted to the authorization, as failure to do so may result in the filing being rejected. Parties not familiar with the Commission's filing requirements should review all filing requirement Rules.

IX. Procedural Ground Rules

The ground rules set forth in Attachment A, intended to promote an equitable, efficient, and orderly hearing, are adopted.

X. Intervenor Compensation

The PHC was held on March 10, 2006. A customer who intends to seek an award of compensation should file and serve a notice of intent to claim compensation no later than 30 days after this PHC. (Pub. Util. Code § 1804(a)(1).)

XI. Principal Hearing Officer

Pursuant to Pub. Util. Code § 1701.3, ALJ Bruce DeBerry is designated as the Principal Hearing Officer in this proceeding.

IT IS RULED that:

1. The categorization of this proceeding is ratesetting for the purposes of Article 2.5 of the Commission's Rules of Practice and Procedure (Rules). This ruling as to categorization is appealable under the procedures in Rule 6.4.

2. *Ex parte* communications are permitted with restrictions, and are subject to reporting requirements. (See, Rules 7(c) and 7.1, and Pub. Util. Code § 1701.3(c).)

3. The scope of this proceeding is to determine whether it is reasonable for the proposed contract between Southern California Edison Company and the Kern River Cogeneration Company to be approved.

4. The scope and schedule are as set forth in this Ruling.

5. Parties should continue to engage in discovery without delay, shall use the procedures in Resolution ALJ-164 for the purposes of discovery disputes.

6. Parties shall use the same outline for briefs.

7. Parties shall follow the procedure stated in this Ruling in making any request for Final Oral Argument.

8. Parties are responsible for notifying the Commission's Process Office and other parties of corrections and changes to the information stated on the official service list, including electronic mail addresses, and ensuring that the information is current and accurate.

9. Parties shall file and serve documents as discussed in this Ruling. Parties shall provide Administrative Law Judge (ALJ) Bruce DeBerry a paper copy of all electronically service documents.

10. ALJ Bruce DeBerry is the Principal Hearing Officer in this proceeding.

Dated March 22, 2006, at San Francisco, California.

/s/ GEOFFREY F. BROWN

Geoffrey F. Brown
Assigned Commissioner

ATTACHMENT A PROCEDURAL GROUND RULES

Experienced practitioners are typically familiar with these or similar ground rules. Nonetheless, they are stated here to promote a uniform understand as this proceeding begins.

Burden of Proof and Clarify of Showings

Applicant has the burden of proof. Applicant and all parties must prepare exhibits that are written clearly and concisely. Exhibits should contain references or footnotes to explain sources as necessary. (See, for example, Decision (D.) 92-12-019, 46 CPUC2d 538 at 555 and 764-5; also see D.93-04-056, 49 CPUC2d 72 at 85-88.)

No Surprises

The Commission is able to reach the most well-informed, well-reasoned decision when all parties are allowed to present their best evidence and argument. A Commission proceeding is not the place to use surprise as a litigation tactic.

Direct Testimony

Each party should make its case in its direct testimony. The Commission is not sympathetic to the use of rebuttal and/or cross-examination as a substitute for a poor, weak or absent direct case.

Rebuttal Testimony

Rebuttal testimony must include a specific reference to the testimony being rebutted. It is inappropriate for any party to hold back direct presentations for introduction in rebuttal testimony. Absent good cause, rebuttal testimony may not be used to present evidence that should have been introduced in the party's direct case.

Exhibit Format

Parties must follow the requirements for exhibits, including page numbering and a blank space two inches high by four inches wide (generally in the upper right corner) to accommodate the Commission's exhibit stamp. (See Rule 70 of the Commission's Rules of Practice and Procedure (Rules).) If necessary for the exhibit stamp or other purpose, please add a cover sheet to the front of the exhibit. If a cover sheet is used, please also state a short title on the cover sheet which generally describes the document. The practice of pre-printing the docket number, a blank line for the exhibit number, and witness names(s) may be followed, but is not a substitute for the required two- by four-inch blank space to accommodate the exhibit stamp.

Exhibits should be bound on the left side or upper left-hand corner. Rubber bands and paper clips are unacceptable. Excerpts from lengthy documents should include the title page and, if necessary for context, the table of contents of the document. While Rule 2 permits a type size of no smaller than 10 points in filed documents, parties are asked to use a type face of no smaller than 12 points wherever practicable.

Exhibit Copies

Parties must provide an adequate number of copies. (See Rule 71.) The original and one copy of each exhibit shall be furnished to the Administrative Law Judge (ALJ), and a copy shall be furnished to the reporter and to each party. The mailed paper copy may substitute for the copy otherwise furnished to the ALJ. Parties are responsible for having sufficient copies available in the hearing room for each party in attendance.

Corrections

The practice of making corrections to exhibits on the witness stand is generally time and resource inefficient. It should be avoided to the extent possible through advance preparation of written errata. Corrections should be made in a timely manner by serving a list of the specific corrections to a previously served proposed exhibit, along with a clean corrected version of the corrected page(s). A “lined-out” or “redlined” corrected page is not required. Each corrected page should be marked with the word “revised” and the revision date, or other marking(s) as necessary to reasonably identify each page as a corrected or changed page. For good cause, but only if necessary, written errata may be brought to the hearing (rather than served before hearing) and distributed before the witness takes the stand. Only as a last resort will errata be taken orally from the witness on the stand. Exhibit corrections will likely receive the same number as the original exhibit plus a letter to identify the correction. For example, Exhibit 5-A is the first correction to Exhibit 5. Minor typographical corrections or wording changes that do not alter the substance or tenor of a document or the relief requested therein need not be made. (Rule 2.6(b).)

Hearing Hours

Hearings will normally run from 9:30 a.m. to noon, and from 1:30 p.m. to 4 p.m., with a 10-minute break each hour. Upon request, and assuming that hearings are on schedule, hearings may be shortened on Fridays.

Cross-Examination

Cross-examination will be limited to the scope of the testimony or rebuttal testimony and to areas identified as a contested fact. Absent a showing of good cause, “friendly” cross-examination will not be permitted. Also absent good cause, cross-examination shall not be used for discovery. Rather, discovery,

along with reasonable clarification of testimony and exhibits, should be undertaken before hearing.

It may be necessary to limit cross-examination time, as well as time for redirect and re-cross-examination. Parties shall prepare an estimate of the time necessary for cross-examination of each witness and provide these estimates no later than the second prehearing conference (i.e., the conference just before hearings begin), or as otherwise directed by the ALJ.

Cross-Examination Exhibits

Providing each witness time to review a new or unfamiliar document during cross-examination is generally an inefficient use of hearing time. As a result, each party intending to introduce an exhibit in the course of cross-examination should provide a copy to the witness and the witness' counsel before the witness takes the stand with sufficient time for reasonable review of the document.⁴ Parties need not provide advance copies of a document to be used for impeachment, to obtain a spontaneous reaction from the witness, or for other legitimate purpose.

Court Reporters and the Record

The creation of a complete and accurate record is important. To facilitate this goal, common courtesy should be extended to the court reporters and other hearing participants. For example, counsel should wait for the witness to finish his or her answer before asking another question. Similarly, the witness should

⁴ Parties should make a reasonable effort to provide a copy of such document(s) to the witness and witness's counsel or representative at least 24 hours before the witness takes the stand in order not to delay the hearing while the witness and counsel review the document(s). For good cause, the time might be reduced to the morning of the day the exhibit is to be introduced.

wait for the whole question to be asked before answering. Counsel shall refrain from simultaneous arguments on motions and objections. Conversations at the counsel table or in the audience can be distracting to the reporter and other participants and should be minimized.

Modifications

For good cause, any party may move to modify these ground rules.

(END OF ATTACHMENT A)

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner on all parties of record in this proceeding or their attorneys of record.

Dated March 22, 2006, at San Francisco, California.

/s/ ELIZABETH LEWIS
Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.